



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Charles Szyman, D.O.
Decision And Order**

On February 10, 2016, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles Szyman, D.O. (hereinafter, Respondent), of Manitowoc, Wisconsin. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration AS3236406, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, on the ground that he does not have authority to handle controlled substances in Wisconsin, the State in which he is registered with the Agency. Order to Show Cause, at 1 (citing 21 U.S.C. §§ 823(f) and 824(a)(3)).

The Show Cause Order alleged that Respondent is registered as a DATA-waived/100 practitioner pursuant to Certificate of Registration No. AS3236406, with authority to handle controlled substances in schedules II through V, at the registered address of P.O. Box 1450, 3200 Western Avenue, Manitowoc, Wisconsin. *Id.* The Order also alleged that Respondent's registration does not expire until February 28, 2017. *Id.*

The Show Cause Order then alleged that State of Wisconsin Medical Examining Board (hereinafter, Board) issued an order suspending Respondent's authority to practice medicine and surgery, effective October 21, 2015. *Id.* The Show Cause Order thus asserted that "DEA must revoke [Respondent's registration] based upon [his] lack of authority to handle controlled substances in the State of Wisconsin." *Id.* (citing 21 U.S.C. §§ 802(21), 823(f) and 824(a)(3)). The Show Cause Order also notified Respondent of his right to request a hearing on the

allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to electing either option. *Id.* at 2 (citing 21 CFR 1301.43).

On March 7, 2016, Respondent, through his counsel, requested a hearing on the allegations of the Show Cause Order. Resp.'s Hrng. Req., at 1. In his hearing request, Respondent conceded that his state license had been summarily suspended, but argued that 21 U.S.C. § 824(a)(3) does not require that DEA revoke a registration if the practitioner has had his state license suspended. *Id.* at 2. He also requested a stay of the proceeding until after the resolution of the Board's case. *Id.*

The matter was placed on the docket of the Office of Administrative Law Judges, and assigned to the Chief Administrative Law Judge (hereinafter, CALJ). Order Directing the Filing of Government Evidence of Lack of State Authority Allegation and Briefing Schedule, at 1. The same day, the CALJ issued an order directing the Government to "provide its position regarding the Respondent's request for a stay" and to file evidence to support its allegation of Respondent's lack of state authority. *Id.* at 1-2. He also ordered Respondent to file a timely reply if the Government filed a motion for summary disposition. *Id.* at 2.

On March 18, 2016, the Government filed its Motion for Summary Disposition, which it supported by attaching a copy of the Board's October 21, 2015 Order of Summary Suspension. Mot. for Summ. Disp., at Appendix B. Therein, the Government argued that it was undisputed that the Board suspended Respondent's state license on October 21, 2015. Mot. for Summ. Disp., at 2. The Government further argued that because Respondent no longer meets the statutory definition of a practitioner and "the Agency has consistently held that 'the CSA requires the revocation of a registration issued to a practitioner ... even where a state board has

suspended ... a practitioner's authority with the possibility that the authority may be restored at some point in the future,'" it was entitled to summary disposition and the recommendation that Respondent's registration be revoked. *Id.* at 4 (citations omitted). The Government also requested that the CALJ deny Respondent's stay request. *Id.*

In his Reply, Respondent argued that "the plain language of section 824(a)(3) provides that the loss of state authority constitutes a discretionary, not mandatory, basis for revocation." Respondent Reply to Gov. Mot. for Summ. Disp., at 1 (citing *James Alvin Chaney*, 80 FR 57391 n.1 (2015)).¹ Respondent's Reply, at 1. However, Respondent also acknowledged that the CALJ's recommended decision in *Chaney* "deferred to Agency precedent" and recommended revocation, and thus he would not "belabor his objection." *Id.* Respondent argued, however, that "[a] stay . . . would afford [him] with his due process right to be heard in a meaningful manner in the State . . . proceeding." *Id.* (citing *Dusenberry v. United States*, 543 U.S. 161 (2002); *Mathews v. Eldridge*, 424 U.S. 319 (1976)).

On March 29, 2016, the CALJ granted the Government's Motion for Summary Disposition, finding that Respondent conceded in his Hearing Request that he is currently without state authority to handle controlled substances in Wisconsin, and thus "no genuine dispute exists over the fact that [Respondent] lacks state authority to handle controlled substances in Wisconsin." Recommended Rulings, Findings of Fact, Conclusions of Law and

¹ Respondent's citation refers to Footnote 1 of the Recommended Decision in *Chaney* and not to the Agency's Decision and Order. In the latter, the Agency made clear that although the language of section 824(a) authorizes either the suspension or revocation of a registration upon the making of one of the five findings enumerated therein, based on the CSA's definition of the term practitioner, *see* 21 U.S.C. § 802(21), and the provision which sets forth the criteria for evaluating an application for a practitioner's registration, *see id.* § 823(f), the Agency has consistently interpreted the CSA as mandating the revocation of a practitioner's registration where the practitioner's state authority has been suspended or revoked. 80 FR 57392 n.2. This interpretation has been upheld by the federal courts. As the Fourth Circuit has held, "[b]ecause sections 823(f) and 802(21) make clear that a practitioner's registration is dependent upon the practitioner having state authority to dispense controlled substances, the [Administrator's] decision to construe section 824(a)(3) as mandating revocation upon suspension of a state license is not an unreasonable interpretation of the CSA." *Hooper v. Holder*, 481 Fed.Appx. 826, 828 (4th Cir. 2012).

Decision of the Administrative Law Judge, at 7. The CALJ also denied Respondent's request for a stay, noting that "the Agency has previously stated that a stay is "unlikely to ever be justified due to ancillary proceedings" and "it is not DEA's policy to stay [administrative] proceedings...while registrants litigate in other forums." *Id.* (citing *Grider Drug #1 & Grider Drug #2*, 77 FR 44070, 44104 n.97 (2012); *Newcare Home Health Services*, 72 FR 42126 (2007)).

Neither party filed Exceptions to the CALJ's Recommended Decision. Thereafter, the record was forward to this office for Final Agency Action. Having considered the entire record, I will adopt the ALJ's ruling that a stay of the proceeding was not warranted, his finding that "Respondent lacks state authority to handle controlled substances" and "is not entitled to maintain his DEA registration," and his recommendation that I revoke Respondent's registration. I make the following factual findings.

FINDINGS

Respondent holds DEA Certificate of Registration AS3236406. Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V, at the registered location of P.O. Box 1450, 2300 Western Avenue, Manitowoc, Wisconsin. Appendix A to Gov. Mot. for Summ. Disp., at 1. Under this registration, Respondent is also authorized to treat up to 100 patients as a DATA-waived physician. *Id.* Respondent's registration does not expire until February 28, 2017. *Id.*

It is undisputed that the Wisconsin Medical Board issued an Order summarily suspending Respondent's state license to practice medicine effective on October 21, 2015. *See also* Appendix B to Gov. Mot. for Summ. Disp., at 3. While according to Respondent's Hearing Request, a hearing to challenge the Board's action was set for May 18, 2016, Respondent's state

license remains suspended as of the date of this Decision and Order.² Resp. Hrng. Req., at 2. See also <https://app.wi.gov/LicenseSearch/IndividualLicense/SearchResultsSummary> (visited Sept. 13, 2016).

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823, “upon a finding that the Registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Moreover, DEA has held repeatedly that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. See, e.g., *James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed Appx. 826 (4th Cir. 2012).

This rule derives from the text of two provisions of the CSA. First, Congress defined “the term ‘practitioner’ [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21

²In its Order, the Board found that Respondent “prescribes unusually large amounts of controlled substances, opioid pain medications in particular, without adequate or any medical support” and “without adequate or any physical examinations or medical testing,” that he “allowed patients to request specific drugs and dosages,” and that he “knows or should know the prescriptions he writes are being diverted, abused and are causing the accidental and intentional deaths of patients and others in the community where he practices.” Appendix B (Board Order), at 1-2. The Board concluded that “there is probable cause to believe that unprofessional conduct has occurred” and that “it is necessary to suspend the license and registration of Respondent . . . immediately to protect the public health, safety or welfare.” *Id.* at 2 (citing Wis. Admin. Code § Med. 10.02(2)(h) (Nov. 2002) and Wis. Admin. Code §§ Med. 10.03(2)(b) and (c) (Oct. 2013)).

U.S.C. § 823(f). Because Congress has clearly mandated that a physician possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. *See, e.g., Calvin Ramsey*, 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988); *see also Hooper v. Holder*, 481 Fed. Appx. at 828.

In his Reply to the Government's Motion, Respondent argues that "the plain language of section 824(a)(3) provides that the loss of state authority constitutes a discretionary, not mandatory, basis for revocation." Resp. Reply, at 1. This Agency has explained, however, that Section 824(a)'s grant of authority to suspend or revoke a registration applies across all categories of registration, including manufacturers, distributors, importers, exporters, narcotic treatment programs, list I distributors, and practitioners, and it applies to five different grounds for sanctioning a registrant. *Hooper*, 76 FR, at 71372. The Agency has further explained that "this general grant of authority in imposing a sanction must be reconciled with the CSA's specific provisions which mandate that a practitioner hold authority under state law in order to obtain and maintain a DEA registration."³ *Id.* *See also Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991) ("A specific provision controls over one of more general application.");

³ By contrast, in *Bio-Diagnostic International*, 78 FR 39327 (2013), a case involving a list I chemical distributor which did not possess state authority, the Agency held that granting summary disposition to the Government on this basis was improper because neither the provision setting forth the standards for the registration of list I distributors, nor the definition of a distributor, requires that a distributor possess state authority in order to be registered. While *Bio-Diagnostic* involved an application, in a footnote, the decision explained that while "section 824(a)(3) authorizes revocation where a registrant 'has had [its] State license suspended, revoked, or denied by competent state authority and is no longer authorized by State law to engage in the manufacturing [or] distribution of . . . list I chemicals[.]' [this] does not mean that revocation is warranted in all instances." *Id.* at 39330 n.6. Continuing, the decision explained that "[t]his provision grants the Agency discretionary authority to impose an appropriate sanction; the failure to consider factors such as the egregiousness of the misconduct and mitigating factors in imposing the sanction would render the sanction arbitrary and capricious." *Id.*

Bloate v. United States, 559 U.S. 196, 207 (2010) (“language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.”).

Thus, in *Hooper v. Holder*, a physician whose state authority was suspended for a period of one year, challenged the revocation of his registration, arguing that the Agency “failed to recognize the discretion under § 824(a) to revoke or suspend a registration and that it was impermissible for the [Agency] to conclude that the CSA requires revocation of a practitioner’s DEA registration when the practitioner’s State license is suspended.” 481 Fed. App’x, at 826. The Fourth Circuit rejected the physician’s challenge, explaining:

We find Hooper’s contention unconvincing. Section 824(a) does state that the [Agency] may “suspend or revoke” a registration, but the statute provides for this sanction in five different circumstances, only one of which is loss of a State license. Because § 823(f) and § 802(21) make clear that a practitioner’s registration is dependent upon the practitioner having state authority to dispense controlled substances, the [Agency’s] decision to construe § 824(a)(3) as mandating revocation upon suspension of a state license is not an unreasonable interpretation of the CSA. The [Agency’s] decision does not “read[] the suspension option” out of the statute, because that option may still be available for the other circumstances enumerated in § 824(a).

Id. See also *Maynard v. DEA*, 117 Fed. Appx. 941, 945 (5th Cir. 2004) (upholding revocation of DEA registration after Texas DPS summarily suspended practitioner’s controlled substance registration, noting that the Agency “has construed the CSA to require revocation when a registrant no longer possesses valid state authority to handle controlled substances”; “We agree with [the] argument that it may have been arbitrary and capricious had the DEA failed to revoke [the physician’s] registration under the circumstances.”).

Indeed, DEA has interpreted the CSA in this manner for nearly 40 years. See *Frederick Marsh Blanton, M.D.*, 43 FR 27616 (1978). In *Blanton*, a physician’s state license was suspended for a period of one year. *Id.* at 27616. The Agency nonetheless revoked the

physician's registration, explaining that "it is the Administrator's finding and conclusion that there is a lawful or statutory basis for the revocation of the Respondent's DEA registration. *State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.* The Respondent's registration must, therefore, be revoked." *Id.* at 27617 (emphasis added). *See also Alfred Tennyson Smurthwaite*, 43 FR at 11873 (same).

Put another way, because a practitioner's registration is dependent upon state authority to dispense controlled substances, when that practitioner's state authority has been revoked or suspended, the practitioner no longer meets the statutory definition. *See* 21 U.S.C. § 802(21). And because the CSA makes clear that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for both obtaining and maintaining a practitioner's registration, "revocation is warranted even where a practitioner's state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action at which he may ultimately prevail." *Kamal Tiwari*, 76 FR 71604, 71606 (2011); *see also Bourne Pharmacy, Inc.*, 72 FR 18273, 18274 (2007); *Anne Lazar Thorn*, 62 FR 12847 (1997).

In his Reply to the Motion for Summary Disposition, Respondent also argues that a stay "would afford [him] with his due process right to be heard in a meaningful manner in the State Medical Examining Board proceeding." Reply, at 1. Respondent, however, offers no explanation as to how my adjudication of this matter impacts, in any manner, his right to be heard in the State proceeding. Indeed, in circumstances similar to those of Respondent, this Agency "has repeatedly denied requests to stay the issuance of a final order of revocation . . . [because] under the Controlled Substances Act, 'a practitioner must be currently authorized to

handle controlled substances . . . to maintain [his] DEA registration.’’ *Gregory F. Saric, M.D.*, 76 FR 16821 (2011) (quoting 21 U.S.C. § 802(21)); *see also Irwin August*, 81 FR 3158 (2016). As the Agency has explained, because “whether Respondent’s state license will be re-instated is entirely speculative, *id.*, ‘[i]t is not DEA’s policy to stay proceedings . . . while registrants litigate in other forums.’” *August*, 81 FR at 3159 (quoting *Newcare Home Health Servs.*, 72 FR 42126, 42127 n.2 (2007) (citing *Bourne Pharmacy*, 72 FR 18273 (2007))). I therefore affirm the ALJ’s ruling denying Respondent’s stay request.

In conclusion, because Respondent is not currently authorized to dispense controlled substances in Wisconsin, the State in which he is registered with the Agency, he is not entitled to maintain his registration. Accordingly, I will adopt the ALJ’s recommendation that I revoke Respondent’s registration.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AS3236406, issued to Charles Szyman, D.O., be, and it hereby is, revoked. This Order is effective immediately.⁴

Dated: September 13, 2016

Chuck Rosenberg
Acting Administrator

⁴ For the same reasons which led the Wisconsin Board to summarily suspend Respondent’s osteopathic license, *see supra* note 2, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

